IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Rustam Khan @ Papu Vs. Aam Singh & others

S.B.CIVIL MISC. APPEAL NO.431/1994

Against the award dated 23.04.1994 made by the Motor Accidents Claims Tribunal, Balotra in Claim Case No.41/1992

Date of Judgment : 18.10.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.J.Gehlot for the appellant
Mr. C.S.Mandora for the respondents

BY THE COURT:

This appeal has been preferred by the owner of the vehicle involved in the accident against the award dated 23.04.1994 made by the Motor Accidents Claims Tribunal, Balotra in Claim Case No.41/1992.

Learned counsel for the appellant has pressed the submissions for consideration that the Tribunal has allowed Rs.90,000/- towards pecuniary loss for accidental death of 22 years old Uttam Singh alias Bhanwar Singh to his parents and wife on the basis of his assumed monthly income of

Rs.1,000/- without any basis thereof and the said amount remains highly excessive; and that the Tribunal has erred in awarding interest at the rate of 12% per annum.

For addressing to the questions involved in the appeal, a brief reference to the facts of the case may be made. On 10.06.1990 the deceased Uttam Singh alias Bhanwar Singh with Chhotu Singh boarded the vehicle in question, a Jonga jeep bearing registration No.RJN 5830 at Ramania. According to the claimants, the vehicle was driven by its owner non-applicant No.1 Rustam Khan, the present appellant, under the influence of liquor and in rash and negligent manner; the vehicle capsized near village Kathadi (Barmer) causing injuries to the occupants; Uttam Singh sustained grievous injuries and was removed to Jalore Hospital where he succumbed. Stating the age of the deceased at 22 years and his monthly income at Rs.1,000/- in private service at Mumbai the claimants claimed compensation in the sum of Rs.7,17,500/-. The insurer non-applicant No.2 contested, inter alia, with the submissions that the deceased was riding the vehicle as a passenger whose risk was not covered under the insurance policy; and that the vehicle was being driven in violation of the policy conditions. The present appellant-non-applicant No.1 while stating want of knowledge and general denial of the claim averments cursorily alleged that he had

purchased the vehicle in question from one Davendra son of Thanji but it was not handed over to him for non-payment of instalment; that he was never a driver on the vehicle; and that earlier he was a student and then was in government service. On the pleadings of parties, following issues were framed:

> "1- आया दिनांक 10/6/90 को करीब 10.30 बजे काठाड़ी से जालोर जाने वाली सड़क पर काठाड़ी से 3 किलो मीटर दूर प्रेमसिंह व जीवाराम के बेरों के पास जीप आर.जे.एन. 5830 को विप्रार्थी सं. 1 ने लापरवाही से चलाते हुये दुर्घटना कारित की जिसमें उत्तमसिंह उर्फ भंवरसिंह पुत्र श्री आमसिंह का देहांत हो गया ?
>
> .....प्रार्थीगण
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> 2- आया प्रार्थीगण माफिक क्लेम हर्जाने की राशि विप्रार्थीगण से पाने के अधिकारी है, यदि है तो किससे व किस कदर?
>
> .....प्रार्थीगण
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> 3- आया विप्रार्थी सं. 2 के मजीद उजरात के पद सं. 1 से 7 के आधार पर प्रार्थना पत्र काबिल खारिज है ?
>
> .....विप्रार्थी
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> 4- दादरसी ।

In evidence the claimants examined their relevant witnesses and produced relevant documents. On the part of the non-applicants only the Branch Manager of the insurer at Balotra Shri D.S.Bhati was examined as NAW-1. No evidence was led by the present appellant.

After hearing the parties, the Tribunal found with reference to the oral and documentary evidence that the accident was caused on the jeep in question turning turtle on account of rash and negligent driving by the non-applicant No.1 (appellant) and the deceased was injured in the said accident and died due to the injuries so sustained. Taking up quantification of compensation, the Tribunal referred to the evidence produced by the claimants that deceased Uttam Singh was in a private service. Wife of the deceased Chhail Kanwar AW-1 stated only about the income of the deceased at Rs.1,000/- per month; whereas father of deceased Aam Singh AW-2 stated the earning of the deceased at Rs.1,000/- per month while working at a shop at Deshawar and contribution to him at about Rs.800/- - 900/- per month. The Tribunal observed that looking to the future certainties and uncertainties and personal expenditure of the deceased, the claimants are entitled for compensation in the sum of Rs.90,000/- towards non-pecuniary loss. The Tribunal also allowed Rs.500/- towards transportation of dead body, Rs.1,000/- towards funeral expenses and another sum of Rs.25,000/- towards non-pecuniary loss. After assessing this much towards loss for the claimants, the Tribunal observed that the matter remained pending though interim compensation was allowed to the claimants within three

months of filing of claim application and that there was some delay in adducing evidence on the part of the claimants and, therefore, allowed pendente lite interest in lump sum of Rs.10,000/-. In this manner, the Tribunal found the claimants entitled for compensation in the sum of Rs.1,26,500/.-

On the question of liability of the insurer, the Tribunal though rejected the contention of the insurer about want of valid driving licence but observed with reference to the insurance certificate Ex.A/1 that it had already been provided that the insurance coverage would not be available on the vehicle being used for hire purposes and it was also noticed from the evidence of the claimants that the deceased was travelling in the vehicle as a passenger after payment of fare and for this reason exonerated the insurer of its liability. While making the award in the sum of Rs.1,26,500/- the Tribunal observed that towards interim compensation an amount of Rs.29,475/- (Rs.25,000/- with interest) had already been paid to the claimants on 17.12.1992 and after deducting the same from the amount of award directed that the remaining amount of Rs.97,025/- be paid within two months and else the same would be paid with interest at the rate of 12% per annum from the date of making of award.

Having examined the record of the case and the considerations adopted by the Tribunal, this Court is clearly of opinion that the submissions sought to be made on behalf of the appellant in this appeal remain totally bereft of substance. What to say of anything excessive, the impugned award on its quantification of compensation remains rather on the lower side, if not grossly inadequate.

The deceased was 22 years of age and his dependents include his parents and the wife. Even if the deceased be assumed to be a small time labourer and earning minimum of the wages in the context of the period of accident i.e. of the year 1990, his monthly earning at Rs.1,000/- cannot be said to be an excessive estimate. The deceased was 22 years of age and his wife was about 18 years of age at the time of accident. Even if only Rs.600/- per month (i.e. less than 2/3rd) from estimated earning of the deceased is provided towards loss of contribution in view of the fact that he was allegedly in private job at Deshawar, and a lower side multiplier of 16 is provided, yet the amount of Rs.90,000/- awarded by the Tribunal towards pecuniary loss falls on the lower side. Other way round, even if the deceased be considered earning only minimum wages as a labourer, pecuniary loss would stand higher than that estimated by the Tribunal. However, the Tribunal has awarded Rs.10,000/- to the parents of the

deceased and Rs.15,000/- to the wife towards non-pecuniary loss and in the overall facts and circumstances and particularly when no cross-objections have been submitted by the claimants, the award is not being considered for enhancement but in any case the impugned award cannot be said to be excessive and definitely falls on the lower side. The submission that quantum of compensation is excessive cannot be accepted.

The submission of learned counsel regarding higher rate of interest is also not well founded for the reason that the Tribunal has even otherwise been restrictive in awarding interest and has proceeded to deny reasonable pendente lite interest on the considerations that the claimants were allowed interim compensation within three months of filing of claim application and the claimants caused delay in producing evidence. This Court is clearly of opinion that on the observations as made by the Tribunal, reasonable rate of interest could not have been denied to the claimants who have not been shown elongating the trial of claim application deliberately or with any ill-intention. The Tribunal has further proceeded to deduct the amount received by the claimants towards non-pecuniary loss inclusive of interest thereupon in the final award made and then has allowed interest at the rate of 12% per annum from the date of making of award.

Viewed from any angle, the award is too restrictive and falls rather on the lower side. Challenge to such a restrictive award by the owner of the vehicle does not carry substance. The rate of interest at 12% per annum in the award made in the year 1994 from the date of making of award cannot be said to be excessive.

It may be pointed out that the insurer has been exonerated in this case particularly with the finding that the insurance policy in question does not provide for insurance coverage for use of the vehicle for hire or reward and the insurer has clearly established its case with reference to the insurance certificate Ex.A/1 and testimony of NAW-1 D.S.Bhati. The appellant has not even appeared in the witness box nor put any opposition to the case set up either by the insurer or by the claimants.

In the aforesaid view of the matter, this appeal turns out to be bereft of substance and is, therefore, dismissed. However, in the circumstances of the case there shall be no order as to costs of this appeal.

(DINESH MAHESHWARI),J.

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